(3)

IN THE CHHATTISGARH HIGH COURT OF JUDICATURE AT BILASPUR C.G.

W.P. No. 5181 ..... / 2005

Writ Petition under Articles 226 & 227 of the Constitution of India.

Petitioner .... Ramesher Sahu s/o Khamhan
aged about 39 yrs.
R/o vill. Rani Jaraud
Tahsil Simga,Distt. RaipurC.G.

versus

Respondents .... 1. State of Chhattisgarh
through the secretary-
Panchayat & rural development
D.K.Bhavan, Raipur C.G.

2. Distt. Collector, Raipur, C.G.

3. Chief Executive Officer,
Janpad Panchayat-Simga
Distt. Raipur C.G.

4. Narad sinh sahu s/o Bhagirathi
aged. about 35 yrs.
R/O vill. Rani Jaraud,
Tah. Simga, Distt. Raipur C.G.

5. Hiralal vishwakarma
s/o Bodhi ram
aged. about 60 yrs.
R/O vill. Rani Jaraud,
Tah. Simga, Distt. Raipur C.G.

6. Shankerlal sahu s/o Mahettarlal
aged. about 35 yrs.
R/O vill. Rani Jaraud,
Tah. Simga, Distt. Raipur C.G.

7. Bhagwati Prasad Sahu s/o
Topi ram, aged. about 36 yrs.

RECEIVED-COPY
17/10/05
CLERK to A. G. BILASPUR

P.R. No. 5334/05
Presented by Shri B.L. Deshmukh
dated 17/10/05

17/10/05

B. Mukherjee

--2--

R/O vill. Rani Jaraud,
Tah. Simga, Distt. Raipur C.G.

8. Chatursing sahu s/o Sukhiram
aged. about 40 yrs.
R/O vill. Rani Jaraud,
Tah. Simga, Distt. Raipur C.G.

9. Hiralal sahu s/o Topi ram
aged. about 34 yrs.
R/O vill. Rani Jaraud,
Tah. Simga, Distt. Raipur C.G.

10. Lakhanlal baghmar s/o
Dek ram, aged. about 65 yrs.
R/O vill. Rani Jaraud,
Tah. Simga, Distt. Raipur C.G.

11. Anand ram sahu s/o Mant ram
aged. about 26 yrs.
R/O vill. Rani Jaraud,
Tah. Simga, Distt.Raipur C.G.

12. Nohar sahu s/o Maya ram
aged. about 45 yrs.
R/O vill. Rani Jaraud,
Tah. Simga, Distt. Raipur C.G.

13. Tuka ram sahu s/o Poona ram
aged. about 34 yrs.
R/O vill. Rani Jaraud,
Tah. Simga, Distt. Raipur C.G.

14. Nirwaachan adhikari/Tahsildar
Gram Panchayat Nirwaachan
2005, Tahsil/block Simga,
Distt. Raipur C.G.

15. Peethasin Adhikari
polling booth No. 167
Gram Panchayat Nirwaachan
2005, block/Tah. Simga,
(GramPanchayat Rani Jaraud)
Distt. Raipur C.G.
through Chief Executive
Officer, Janpad Panchayat
Simga, Distt. Raipur C.G.

--3--

(5)

(3)

16.Peethasin Adhikari
polling booth No. 168
Gram Panchayat Nirwaachan
2005, block/Tah. Simga,
(GramPanchayat Rani Jaraud)
Distt. Raipur C.G.
through Chief Executive
Officer, Janpad Panchayat
Simga, Distt. Raipur C.G.

17.Peethasin Adhikari
polling booth No. 169
Gram Panchayat Nirwaachan
2005, block/Tah. Simga,
(GramPanchayat Rani Jaraud)
Distt. Raipur C.G.
through Chief Executive
Officer, Janpad Panchayat
Simga, Distt. Raipur C.G.

18.Peethasin Adhikari
polling booth No. 170
Gram Panchayat Nirwaachan
2005, block/Tah. Simga,
(GramPanchayat Rani Jaraud)
Distt. Raipur C.G.
through Chief Executive
Officer, Janpad Panchayat
Simga, Distt. Raipur C.G.

1. Perticulars of the Petitioner :-

(30)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP No. 5181/05 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

07.11.2005

Shri B.L. Deembra, Advocate for the petitioner.

Shri Yashwant Singh Thakur, Govt. Advocate for the State.

By this writ petition under Articles 226 & 227 of the Constitution of India the petitioner has questioned the legality, propriety and correctness of the order dated 5.9.2005 passed by the Specified Officer, Bhatapara, District Raipur in Election Petition No.A1/B/151 Year 2004-2005 whereby learned Specified Officer has dismissed the election petition filed by the petitioner herein under Section 122 of C.G. Panchayat Raj Adhiniyam, 1993 read with Rules, 2004 for recounting of votes.

Brief facts leading to filing of this writ petition are that the petitioner herein and 10 other persons contested the election for the post of Sarpanch of Gram Panchayat, Rani Jarod. Counting of votes took place on 15.1.2005 and at the end of counting respondent No.4 herein namely Narad Singh was declared elected Sarpanch by a margin of three votes. Being dissatisfied with the result the petitioner herein moved an election petition under Section 122 of the Adhiniyam, 1993, notices were given to the respondents herein and reply of the same was also filed by the respondents. Learned Specified Officer after giving opportunity for adducing evidence to both the parties and after recording the evidence dismissed the election petition of the petitioner, as mentioned above.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

I have heard learned counsel for the petitioner on admission.

Learned counsel for the petitioner argued that the order of learned Specified Officer is perverse, for the reason that the same is based on the overruled judgment of the Hon'ble Apex Court in the matter of **Smt. Ramrati Vs. Saroj Devi and others** reported in **AIR 1997 SC 3072**. He further argued that the Presiding Officer did not except the application moved by the petitioner herein for recounting of votes, therefore, the order impugned is liable to be set aside.

Having heard learned counsel for the petitioner, I have perused the petition and impugned order.

Perusal of impugned order shows that argument advanced by learned counsel for the petitioner that the election petition has been dismissed after relying upon the overruled judgment is incorrect. Learned Specified Officer after evaluating the evidence of witnesses of the petitioner herein and also the witnesses of respondent No.4 herein reached to the conclusion in the penultimate paragraph of the order that witnesses have admitted in their cross-examination that counting took place in a peaceful manner, there was no irregularity, at the end of counting the agents of the petitioner herein after taking counting slip left the place and none of the agents of petitioner moved any application in writing for recount of votes on the ground of irregularity. As per averments, next day the petitioner tried to give application but that was not accepted. Therefore, the Specified Officer has dismissed

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the petition on the ground that the petitioner herein has not been able to establish that on account of irregularity in counting respondent No.4 was declared elected. Further perusal of the impugned order shows that a return was filed on behalf of the Election Officers in which they have categorically denied the allegation of irregularity in counting of votes and that the petitioner's votes were rejected illegally.

I have also perused the evidence of witnesses of petitioner referred by the Specified Officer in the judgment. As far as the evidence of Lakhan Lal and the petitioner himself is concerned, they were not present at the time of counting, therefore, their evidence is of no relevance. As far as the evidence of petitioner's agent namely Johrilal is concerned, in the cross-examination he has stated that he was present till the end of counting, counting took place in a peaceful manner and agents of all the candidates were present. He has simply stated that the votes, which were rejected, were not shown to the agents but at the same time he has stated that in respect of that no written complaint was made. He further stated that after counting he took the counting slip and left for his house and he had not made any request for recounting. Similar was the evidence of Sonchand and he has gone to the extent saying that the counting took place in a peaceful manner and he does not know that 30 rejected votes were cast in whose favour. He further stated that the petitioner herein had secured 77 votes, whereas, respondent No.4 secured 58

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —५—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	votes, therefore, his evidence is totally contrary to the factual situation. He has further gone to the extent that even recount took place in which 02 votes of respondent No.4 were increased. He has further stated that no written complaint or request regarding recount of votes was made to the Presiding Officer. Therefore, the finding of the Specified Officer does not suffer from any illegality or irregularity. The impugned order has been passed correctly after appreciation of evidence on record and the petitioner has not been able to make out a case for interference by this Court. In the result, the petition of the petitioner is liable to be dismissed and it is, accordingly, dismissed at the admission stage itself. Consequently, M.(W.)P. No.4195/05 also stands dismissed. In view of this order, I.A. No.9052/05 for urgent hearing stands disposed of. **Sd/-** **L.C. Bhadoo** **Judge**	

Roshan/-